

State of Washington
REPORT OF EXAMINATION
FOR WATER RIGHT APPLICATION

PRIORITY DATE
4/15/1999

WATER RIGHT NUMBER
S3-30216

MAILING ADDRESS
MARK FREIBERGER
P.O. BOX 169
Sedro Wooley WA 98284

SITE ADDRESS (IF DIFFERENT)

Quantity Authorized for Diversion

DIVERSION RATE
0.02

UNITS
CFS

ANNUAL QUANTITY (AF/YR)
0

Purpose

PURPOSE	DIVERSION RATE		UNITS	ANNUAL QUANTITY (AF/YR)		PERIOD OF USE (mm/dd)
	ADDITIVE	NON-ADDITIVE		ADDITIVE	NON-ADDITIVE	
Non-consumptive hydropower	0.02		CFS	0		01/01 - 12/31

Source Location

COUNTY	WATERBODY	TRIBUTARY TO				WATER RESOURCE INVENTORY AREA	
STEVENS	UNNAMED STREAM	CHINA CREEK				61-UPPER LAKE ROOSEVELT	

SOURCE FACILITY/DEVICE	PARCEL	TWP	RNG	SEC	QQ Q	LATITUDE	LONGITUDE
UNNAMED STREAM	1994600	38 N.	38 E.	35	NWNW	48.7566224	117.9992737

Datum: NAD83/WGS84

Place of Use (See Attached Map)

PARCELS (NOT LISTED FOR SERVICE AREAS)
1994800

LEGAL DESCRIPTION OF AUTHORIZED PLACE OF USE

NW $\frac{1}{4}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 34, T. 38 N, R. 38 E.W.M.

Proposed Works

Ring tiles with a gravity feed pvc pipe to the property

Development Schedule

BEGIN PROJECT	COMPLETE PROJECT	PUT WATER TO FULL USE
October 1, 2016	October 1, 2018	October 1, 2020

Measurement of Water Use

How often must water use be measured?	Monthly
How often must water use data be reported to Ecology?	Upon Request by Ecology
What volume should be reported?	Total Annual Volume
What rate should be reported?	Annual Peak Rate of Withdrawal (cfs)

Provisions

Measurements, Monitoring, Metering and Reporting

An approved measuring device shall be installed and maintained for each of the sources identified by this water right in accordance with the rule "Requirements for Measuring and Reporting Water Use", WAC 173-173.

WAC 173-173 describes the requirements for data accuracy, device installation and operation, and information reporting. It also allows a water user to petition the Department of Ecology for modifications to some of the requirements.

Water Use Efficiency

The water right holder is required to maintain efficient water delivery systems and use of up-to-date water conservation practices consistent with RCW 90.03.005.

The construction of the facilities for the appropriation of water under the application may require removal of material from or adjacent to a stream channel or watercourse. A Hydraulic Approval may be obtained from the Department of Fish and Wildlife prior to commencing work. This authorization may be subject to Washington Department of Fish and Wildlife screening criteria as outlined in a Hydraulic Project Approval. Please contact the Department of Fish and Wildlife, 600 Capitol Way North, Olympia, Washington 98501-1091, Attention: Habitat Management Division, Phone (360) 902-2534, to obtain specific requirements for your project. <http://wdfw.wa.gov/about/contact/>

The water source and/or water transmission facilities are not wholly located upon the land owned by the applicant. Issuance of a permit by this Department for appropriation of the waters in question does not convey a right of access to, or other right to use, land which the applicant does not legally possess. Obtainment of such right is a private matter between applicant and owner of that land.

At no time shall the diversion of water dewater the creek. Sufficient water shall be bypassed to ensure riparian habitat in the bypass reach of approximately 1000 feet.

Proof of Appropriation

The water right holder shall file the notice of Proof of Appropriation of water (under which the certificate of water right is issued) when the permanent distribution system has been constructed and the quantity of water required by the project has been put to full beneficial use. The certificate will reflect the extent of the project perfected within the limitations of the permit. Elements of a proof inspection may include as appropriate contracting with a Certified Water Right Examiner to confirm the source(s), system instantaneous capacity, beneficial use(s), annual quantity, place of use, and satisfaction of provisions.

Schedule and Inspections

Department of Ecology personnel, upon presentation of proper credentials, shall have access at reasonable times, to the project location, and to inspect at reasonable times, records of water use, wells, diversions, measuring devices and associated distribution systems for compliance with water law.

Findings of Facts

Upon reviewing the investigator's report, I find all facts, relevant and material to the subject application, have been thoroughly investigated. Furthermore, I concur with the investigator that water is available from the source in question; that there will be no impairment of existing rights; that the purpose(s) of use are beneficial; and that there will be no detriment to the public interest.

Therefore, I ORDER approval of Application No. S3-30216, subject to existing rights and the provisions specified above.

Your Right To Appeal

You have a right to appeal this Order to the Pollution Control Hearings Board (PCHB) within 30 days of the date of receipt of this Order. The appeal process is governed by Chapter 43.21B RCW and Chapter 371-08 WAC. "Date of receipt" is defined in RCW 43.21B.001(2).

To appeal you must do the following within 30 days of the date of receipt of the Order.

File your appeal and a copy of this Order with the PCHB (see addresses below). Filing means actual receipt by the PCHB during regular business hours.

- Serve a copy of your appeal and this Order on Ecology in paper form - by mail or in person. (See addresses below.) E-mail is not accepted.
- You must also comply with other applicable requirements in Chapter 43.21B RCW and Chapter 371-08 WAC.

Street Addresses	Mailing Addresses
Department of Ecology Attn: Appeals Processing Desk 300 Desmond Drive SE Lacey, WA 98503	Department of Ecology Attn: Appeals Processing Desk PO Box 47608 Olympia, WA 98504-7608
Pollution Control Hearings Board 1111 Israel Road SW Ste 301 Tumwater, WA 98501	Pollution Control Hearings Board PO Box 40903 Olympia, WA 98504-0903

Signed at Spokane, Washington, this day of 2015.



Keith L. Stoffel, Section Manager

For additional information visit the Environmental Hearings Office Website: <http://www.eho.wa.gov>. To find laws and agency rules visit the Washington State Legislature Website: <http://www1.leg.wa.gov/CodeReviser>.

BACKGROUND

This report serves as the written findings of fact concerning Water Right Application Number S3-30216.

Public Notice

RCW 90.03.280 requires that notice of a water right application be published once a week, for two consecutive weeks, in a newspaper of general circulation in the county or counties where the water is to be stored, diverted and used. Notice of this application was published in the Statesman Examiner on September 27 and October 4, 2000 and no protests were received. During the field investigation investigators found the location of the diversion in a different location. An amended notice was published October 8 and 14, 2014. One protest was received and will be discussed later in the report.

Consultation with the Department of Fish and Wildlife

RCW 90.03.280 requires the Department to send notice to the Department of Fish and Wildlife of applications to divert, withdraw or store water. The Department of Fish and Wildlife provided written comments November 28, 2000. These comments will be addressed later in the report.

State Environmental Policy Act (SEPA)

A water right application is subject to a SEPA threshold determination (i.e., an evaluation whether there are likely to be significant adverse environmental impacts) if any one of the following conditions are met.

- (a) It is a surface water right application for more than 1 cubic foot per second, unless that project is for agricultural irrigation, in which case the threshold is increased to 50 cubic feet per second, so long as that irrigation project will not receive public subsidies;
- (b) It is a groundwater right application for more than 2,250 gallons per minute;
- (c) It is an application that, in combination with other water right applications for the same project, collectively exceed the amounts above;
- (d) It is a part of a larger proposal that is subject to SEPA for other reasons (e.g., the need to obtain other permits that are not exempt from SEPA);
- (e) It is part of a series of exempt actions that, together, trigger the need to do a threshold determination, as defined under WAC 197-11-305.

Because this application does not meet any of these conditions, it is categorically exempt from SEPA and a threshold determination is not required.

INVESTIGATION

A site visit was conducted on June 12, 2014. The applicant was present. A second site visit was conducted with the protestant on October 30, 2014.

The applicant has constructed a residence with a lawn, outbuildings, fruit trees and a small garden. The current source of water for the residence is from an old hand dug well located in the SE $\frac{1}{4}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 34. The well produces sufficient water for the residence, and some limited irrigation.

The proposed diversion is not yet constructed. The proposed diversion is to be located in the NW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 35. The applicant plans to excavate next to the stream and install a 4 foot ring tile and backfill with drain rock. A 1½ inch PVC pipe would traverse down to the residence to supply alternate single domestic use including irrigation of approximately two acres of lawn, garden and fruit trees, and hydropower. The water for non-consumptive hydropower would be returned to the creek near the NW corner of the SE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 34 where the stream crosses the applicant's property when being used for hydropower. When water is not in use, the system should not be diverting water through the bypass reach.

The diversion area lies on a small flat area near the section line. The diversion is upstream of a high gradient slope. Water was flowing at the time of the field examination in quantities less than 0.02 cfs. The hill drops off steeply down to the applicant's property. As the creek flows out into the alluvial deposits near the center of the NE $\frac{1}{4}$ of Section 34, it begins to diminish. As the creek reaches the adjacent hay field (SW $\frac{1}{4}$ NE $\frac{1}{4}$) the creek channel is no longer defined. It is evident from erosional patterns the flows can be significant during spring runoff, but flows diminish rapidly as summer progresses. Flows were not passing the corner of the applicant's property at the time of the

examination (6-12-14). The main channel of China Creek is located approximately 1000 feet west of this location. Springs emerge in the hay field again and the flow of China Creek flows continuously down to Section 9 near Highway 25. It would appear the creek flows contribute directly to the mainstem of China Creek during significant runoff events and subsurface flows would contribute throughout the year.

Beneficial Use

Single domestic supply including lawn, garden irrigation and hydropower are beneficial uses. Ten gallons per minute (0.02 cfs), and four acre-feet per year should be sufficient for single domestic supply (including the lawn, garden and fruit trees). No annual quantity is attached to the hydropower since it returns to the creek.

Consideration of Comments and Protests

The Department of Fish and Wildlife submitted comments on November 28, 2000. The recommendation indicated the stream contained a high gradient which precluded fish passage and was seasonal at lower elevations. It did indicate the requirement for a Hydraulic Project Approval (HPA).

Ernest Gregory filed a protest. He is located downstream from the applicant's property and has Surface Water Certificate 8758. Surface Water Certificate 8758 confirms a right of 0.33 cfs, 100 acre-feet per year for irrigation of 25 acres. The priority date of this right is November 14, 1961. In discussions with the protestant, this right has been used since it was acquired in 1961. In recent time, the flow of the creek has continued to diminish significantly. The last 4-6 years, there has been very few times when there has been sufficient water to turn on the pumps and irrigate the main hay field. The small impoundment behind the dam is not sufficient to store enough water to keep the big pump running. He has installed a small pump and continues to pump some water for irrigation around the house. He indicated the last time there was a sufficient flow of water was in 2011 or 2012, but only for a short period of time early in the season. He expressed concern that issuance of additional water rights, even small ones would continue to diminish the creek and impact his ability to exercise his senior water right. This right issued in 1961 and confirms a use to the entire flow of the creek in most years.

Water Availability

An analysis of water availability must take into account not only the physical limitations on the source of supply, but the legal availability as well.

There is physically sufficient water for 0.02 cfs for single domestic supply including garden, lawn and fruit trees and hydropower. Storage would be required during late summer.

To address legal availability, the protestant concerns must be taken into account. The protestant is located approximately 6000 feet downstream from the applicant.

In recent time, the flow of the creek has continued to diminish. The last 4-6 years, there have been very few times when there has been sufficient water to turn on the pumps and irrigate the main hay field. The protestant indicated the last time there was a sufficient flow of water was in 2011 or 2012, but only for a short period of time early in the season. He expressed concern that issuance of additional water right, even small ones would continue to diminish the creek and impact his ability to exercise the right.

Based on the discussions with the protestant, it appears there is not sufficient water available in most years to fully satisfy the senior water users downstream.

Legal availability is determined when there is sufficient water to satisfy senior water users. In this case, the issuance of additional consumptive water uses, although small, would diminish water for senior rights. As identified above it would appear there is no water legally available for additional consumptive uses as the senior water user is unable to fulfill his right on an annual basis.

Impairment Considerations

A review of department records was conducted for existing water rights, permits, and claims within the vicinity of the proposed diversion.

There are no rights of record within the vicinity of the diversion.

Five water right claims are on file in Section 34, T. 38 N., R. 38 E.W.M. All of the claims are short form water right claims. These claims would represent small water uses typical of those identified in the ground water exemption, those uses being less than ½ acre of lawn and garden irrigation, domestic and stock. No other water rights are on record in Section 34.

Water Right Claim 160502 was filed by James McNeil for the SE¼NE¼ of Section 34 claiming a use of a spring for domestic, stock and irrigation. This spring was not located during the field examination. It is unclear if this claim is for the shallow well used for domestic supply at the applicant's residence.

Surface Water Certificate 8758 was issued for the Creek downstream of the applicant's proposed point of diversion. This authorization allows for the entire creek to be diverted, up to 0.33 cfs. As water has not been available to satisfy this right in recent years, issuance of additional consumptive water rights upstream of this senior water user would impair the senior water user.

The approval of this application for consumptive use will be detrimental to the senior rights downstream. The issuance of this authorization for non-consumptive hydropower use would not impair the senior water use.

Public Interest Considerations

There has been public expression of protest or concern regarding the subject proposal, and findings through this investigation indicate that there would be detriment to existing rights and impact to the public welfare through issuance of the proposed appropriation.

Chapter 90.54 RCW provides that water allocation shall secure maximum net benefits to the people of the state, while also requiring that perennial rivers of the state shall be retained with base flows necessary to provide for the preservation of fish and other environmental values. Diversions for hydropower must not dry up the stream. Flows must be bypassed to maintain riparian habitat along the creek. Most of the bypass reach is not on the applicant's property and must have sufficient flow for maintenance of the riparian habitat.

The approval of this application for consumptive use will be detrimental to the public interest. The applicant has an alternate source of water to satisfy his domestic uses. Additional storage may be required in his existing system.

The issuance of this authorization for non-consumptive hydropower use would not impair the senior water use.

Conclusions

Under Chapter 90.03.290 RCW, an application for permit may be approved if water is available for appropriation, and the proposed use would be a beneficial use, would not impair existing water rights, and would not be detrimental to the public welfare.

It is the conclusion of this examiner that surface water is not available for single domestic supply including up to two acres of irrigation as the use will impair senior water rights.

Water is available for non-consumptive hydropower. This appropriation for non-consumptive use is considered a beneficial use and will not impair existing water rights or be detrimental to the public welfare.

RECOMMENDATIONS

Based on the above investigation and conclusions, I recommend that this request for a water right be approved in the amounts and within the limitations listed below and subject to the provisions listed above.

Purpose of Use and Authorized Quantities

The amount of water recommended is a maximum limit and the water user may only use that amount of water within the specified limit that is reasonable and beneficial:

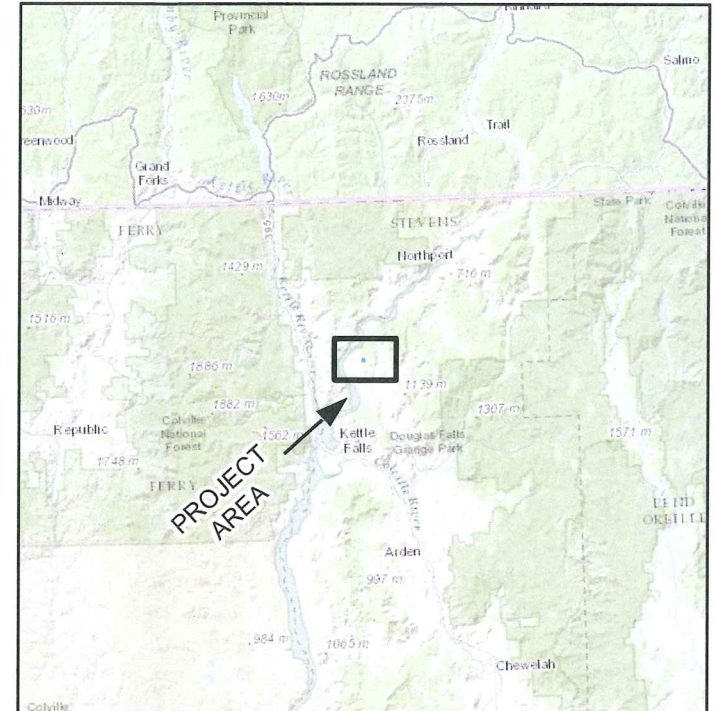
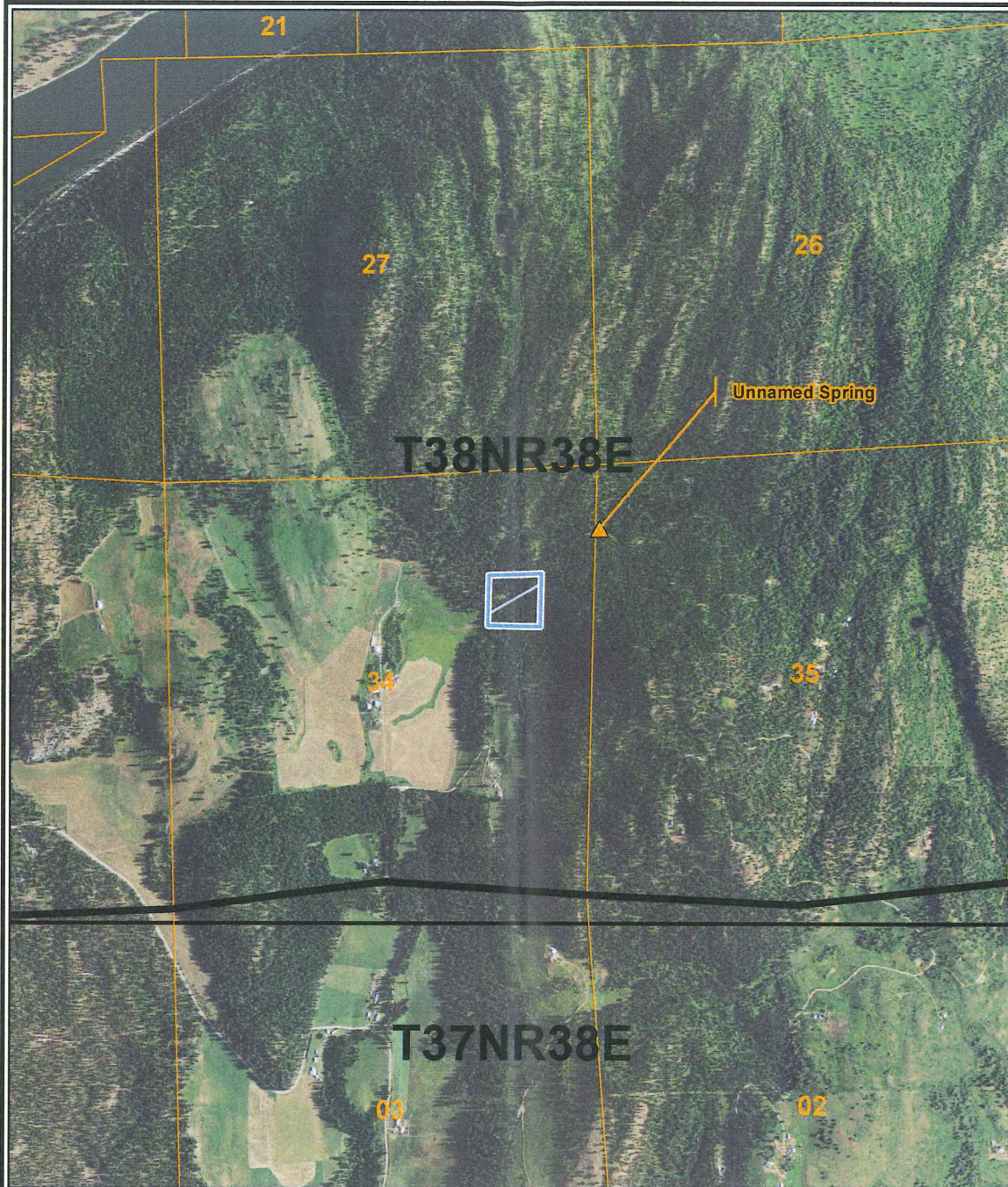
0.02 cubic feet per second
0 acre-feet per year
Non-consumptive hydropower


Kevin Brown, Report Writer

2-17-15
Date

If you need this publication in an alternate format, please call the Water Resources Program at (360) 407-6600. Persons with hearing loss can call 711 for Washington Relay Service. Persons with a speech disability can call 877-833-6341.

Mark & Dana Freiburger
S3-30216
T38N/R38E



Basemap - (ESRI US Topographic Maps)

Legend



Authorized Place of Use



Townships



Sections



Authorized Point of Diversion

0 660 1,320 2,640 3,960 5,280 6,600 Feet

Basemap - (NAIP 2013 1m color)



Map Date: 1/27/2015



Comment:

Place of use and source locations are as defined within the Report of Examination cover sheet for the document identified in the header above.